

review by the United States district court for the district in which the pertinent area is located.

(Pub. L. 95-87, title VI, § 601, Aug. 3, 1977, 91 Stat. 515.)

SUBCHAPTER VII—ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS

§ 1291. Definitions

For the purposes of this chapter—

(1) “alluvial valley floors” means the unconsolidated stream laid deposits holding streams where water availability is sufficient for sub-irrigation or flood irrigation agricultural activities but does not include upland areas which are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation and windblown deposits;

(2) “approximate original contour” means that surface configuration achieved by back-filling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated; water impoundments may be permitted where the regulatory authority determines that they are in compliance with section 1265(b)(8) of this title;

(3) “commerce” means trade, traffic, commerce, transportation, transmission, or communication among the several States, or between a State and any other place outside thereof, or between points in the same State which directly or indirectly affect interstate commerce;

(4) “Federal lands” means any land, including mineral interests, owned by the United States without regard to how the United States acquired ownership of the land and without regard to the agency having responsibility for management thereof, except Indian lands: *Provided*, That for the purposes of this chapter lands or mineral interests east of the one hundredth meridian west longitude owned by the United States and entrusted to or managed by the Tennessee Valley Authority shall not be subject to sections 1304 (Surface Owner Protection) and 1305 (Federal Lessee Protection) of this title.¹

(5) “Federal lands program” means a program established by the Secretary pursuant to section 1273 of this title to regulate surface coal mining and reclamation operations on Federal lands;

(6) “Federal program” means a program established by the Secretary pursuant to section 1254 of this title to regulate surface coal mining and reclamation operations on lands within a State in accordance with the requirements of this chapter;

(7) “fund” means the Abandoned Mine Reclamation Fund established pursuant to section 1231 of this title;

(8) “imminent danger to the health and safety of the public” means the existence of any condition or practice, or any violation of a permit or other requirement of this chapter in a surface coal mining and reclamation operation, which condition, practice, or violation could reasonably be expected to cause substantial physical harm to persons outside the permit area before such condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose himself or herself to the danger during the time necessary for abatement;

(9) “Indian lands” means all lands, including mineral interests, within the exterior boundaries of any Federal Indian reservation, notwithstanding the issuance of any patent, and including rights-of-way, and all lands including mineral interests held in trust for or supervised by an Indian tribe;

(10) “Indian tribe” means any Indian tribe, band, group, or community having a governing body recognized by the Secretary;

(11) “lands within any State” or “lands within such State” means all lands within a State other than Federal lands and Indian lands;

(12) “Office” means the Office of Surface Mining Reclamation and Enforcement established pursuant to subchapter II;

(13) “operator” means any person, partnership, or corporation engaged in coal mining who removes or intends to remove more than two hundred and fifty tons of coal from the earth by coal mining within twelve consecutive calendar months in any one location;

(14) “other minerals” means clay, stone, sand, gravel, metalliferous and nonmetalliferous ores, and any other solid material or substances of commercial value excavated in solid form from natural deposits on or in the earth, exclusive of coal and those minerals which occur naturally in liquid or gaseous form;

(15) “permit” means a permit to conduct surface coal mining and reclamation operations issued by the State regulatory authority pursuant to a State program or by the Secretary pursuant to a Federal program;

(16) “permit applicant” or “applicant” means a person applying for a permit;

(17) “permit area” means the area of land indicated on the approved map submitted by the operator with his application, which area of land shall be covered by the operator’s bond as required by section 1259 of this title and shall be readily identifiable by appropriate markers on the site;

(18) “permittee” means a person holding a permit;

(19) “person” means an individual, partnership, association, society, joint stock company, firm, company, corporation, or other business organization;

(20) the term “prime farmland” shall have the same meaning as that previously prescribed by the Secretary of Agriculture on the basis of such factors as moisture availability, temperature regime, chemical balance, per-

¹ So in original. The period probably should be a semicolon.

meability, surface layer composition, susceptibility to flooding, and erosion characteristics, and which historically have been used for intensive agricultural purposes, and as published in the Federal Register.¹

(21) "reclamation plan" means a plan submitted by an applicant for a permit under a State program or Federal program which sets forth a plan for reclamation of the proposed surface coal mining operations pursuant to section 1258 of this title;

(22) "regulatory authority" means the State regulatory authority where the State is administering this chapter under an approved State program or the Secretary where the Secretary is administering this chapter under a Federal program;

(23) "Secretary" means the Secretary of the Interior, except where otherwise described;

(24) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, and Guam;

(25) "State program" means a program established by a State pursuant to section 1253 of this title to regulate surface coal mining and reclamation operations, on lands within such State in accord with the requirements of this chapter and regulations issued by the Secretary pursuant to this chapter;

(26) "State regulatory authority" means the department or agency in each State which has primary responsibility at the State level for administering this chapter;

(27) "surface coal mining and reclamation operations" means surface mining operations and all activities necessary and incident to the reclamation of such operations after August 3, 1977;

(28) "surface coal mining operations" means—

(A) activities conducted on the surface of lands in connection with a surface coal mine or subject to the requirements of section 1266 of this title surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include excavation for the purpose of obtaining coal including such common methods as contour, strip, auger, mountain-top removal, box cut, open pit, and area mining, the uses of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal for interstate commerce at or near the mine site: *Provided, however,* That such activities do not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16½ per centum of the tonnage of minerals removed for purposes of commercial use or sale or coal explorations subject to section 1262 of this title; and

(B) the areas upon which such activities occur or where such activities disturb the natural land surface. Such areas shall also include any adjacent land the use of which is

incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities; and²

(29) "unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of any violation of his permit or any requirement of this chapter due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or the chapter due to indifference, lack of diligence, or lack of reasonable care;

(30) "lignite coal" means consolidated lignitic coal having less than 8,300 British thermal units per pound, moist and mineral matter free;

(31) the term "coal laboratory", as used in subchapter VIII, means a university coal research laboratory established and operated pursuant to a designation made under section 1311 of this title;

(32) the term "institution of higher education" as used in subchapters VIII and IX, means any such institution as defined by section 1001³ of title 20;

(33) the term "unanticipated event or condition" as used in section 1260(e) of this title means an event or condition encountered in a remining operation that was not contemplated by the applicable surface coal mining and reclamation permit; and

(34) the term "lands eligible for remining" means those lands that would otherwise be eligible for expenditures under section 1234 of this title or under section 1232(g)(4) of this title.

(Pub. L. 95-87, title VII, § 701, Aug. 5, 1977, 91 Stat. 516; Pub. L. 102-486, title XXV, § 2503(c), Oct. 24, 1992, 106 Stat. 3103; Pub. L. 105-244, title I, § 102(a)(10), Oct. 7, 1998, 112 Stat. 1620.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 95-87, Aug. 3, 1977, 91 Stat. 445, which enacted this chapter and amended section 1114 of Title 18, Crimes and Criminal Procedure. For complete classification of this Act to the Code, see Short Title note set out under section 1201 of this title and Tables.

Section 1001 of title 20, referred to in par. (32), was in the original "section 101 of the Higher Education Act of 1968" and was translated as reading "section 101 of the Higher Education Act of 1965", meaning section 101 of Pub. L. 89-329, to reflect the probable intent of Congress because section 101 was added to the Higher Education Act of 1965 by Pub. L. 105-244.

AMENDMENTS

1998—Par. (32). Pub. L. 105-244 substituted "section 1001" for "section 1141(a)".

² So in original. The word "and" probably should not appear.

³ See References in Text note below.

1992—Pars. (33), (34). Pub. L. 102-486 added pars. (33) and (34).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of Title 20, Education.

§ 1292. Other Federal laws

(a) Construction of chapter as superseding, amending, modifying, or repealing certain laws

Nothing in this chapter shall be construed as superseding, amending, modifying, or repealing the Mining and Minerals Policy Act of 1970 (30 U.S.C. 21a), the National Environmental Policy Act of 1969 (42 U.S.C. 4321-47), or any of the following Acts or with any rule or regulation promulgated thereunder, including, but not limited to—

(1) The Federal Metal and Nonmetallic Mine Safety Act (30 U.S.C. 721-740).

(2) The Federal Coal Mine Health and Safety Act of 1969 (83 Stat. 742) [30 U.S.C. 801 et seq.].

(3) The Federal Water Pollution Control Act (79 Stat. 903), as amended [33 U.S.C. 1251 et seq.], the State laws enacted pursuant thereto, or other Federal laws relating to preservation of water quality.

(4) The Clean Air Act, as amended [42 U.S.C. 7401 et seq.].

(5) The Solid Waste Disposal Act [42 U.S.C. 6901 et seq.].

(6) The Refuse Act of 1899 (33 U.S.C. 407).

(7) The Fish and Wildlife Coordination Act of 1934 (16 U.S.C. 661-666c).

(8) The Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 et seq.).

(b) Effect on authority of Secretary or heads of other Federal agencies

Nothing in this chapter shall affect in any way the authority of the Secretary or the heads of other Federal agencies under other provisions of law to include in any lease, license, permit, contract, or other instrument such conditions as may be appropriate to regulate surface coal mining and reclamation operations on land under their jurisdiction.

(c) Cooperation

To the greatest extent practicable each Federal agency shall cooperate with the Secretary and the States in carrying out the provisions of this chapter.

(d) Major Federal action

Approval of the State programs, pursuant to section 1253(b) of this title, promulgation of Federal programs, pursuant to section 1254 of this title, and implementation of the Federal lands programs, pursuant to section 1273 of this title, shall not constitute a major action within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). Adoption of regulations under section 1251(b) of this title shall constitute a major action within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

(Pub. L. 95-87, title VII, § 702, Aug. 3, 1977, 91 Stat. 519.)

REFERENCES IN TEXT

The Mining and Minerals Policy Act of 1970 (30 U.S.C. 21a), referred to in subsec. (a), is Pub. L. 91-631, Dec. 31, 1970, 84 Stat. 1876, which enacted section 21a of this title and provisions set out as a note under section 21a of this title. For complete classification of this Act to the Code, see Short Title note set out under section 21a of this title and Tables.

The National Environmental Policy Act of 1969 (42 U.S.C. 4321-47), referred to in subsec. (a), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

The Federal Metal and Nonmetallic Mine Safety Act (30 U.S.C. 721-740), referred to in subsec. (a)(1), is Pub. L. 89-577, Sept. 16, 1966, 80 Stat. 772, which was classified generally to chapter 21 (§ 721 et seq.) of this title and was repealed by Pub. L. 95-164, title III, § 306(a), Nov. 9, 1977, 91 Stat. 1322.

The Federal Coal Mine Health and Safety Act of 1969 (83 Stat. 742), referred to in subsec. (a)(2), is Pub. L. 91-173, Dec. 30, 1969, 83 Stat. 742, as amended, which was redesignated the Federal Mine Safety and Health Act of 1977 by Pub. L. 95-164, title I, § 101, Nov. 9, 1977, 91 Stat. 1290, and is classified principally to chapter 22 (§ 801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 801 of this title and Tables.

The Federal Water Pollution Control Act (79 Stat. 903), referred to in subsec. (a)(3), is act June 30, 1948, ch. 758, 62 Stat. 1155, as amended generally by Pub. L. 92-500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§ 1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Clean Air Act, referred to in subsec. (a)(4), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§ 7401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

The Solid Waste Disposal Act (42 U.S.C. 3251-3259), referred to in subsec. (a)(5), is title II of Pub. L. 89-272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94-580, § 2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§ 6901 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of Title 42 and Tables.

The Refuse Act of 1899 (33 U.S.C. 407), referred to in subsec. (a)(6), probably means act Mar. 3, 1899, ch. 425, § 13, 30 Stat. 1152, which enacted section 407 of Title 33, Navigation and Navigable Waters.

The Fish and Wildlife Coordination Act of 1934 (16 U.S.C. 661-666c), referred to in subsec. (a)(7), is act Mar. 10, 1934, ch. 55, 48 Stat. 401, as amended, known as the Fish and Wildlife Coordination Act, which is classified generally to sections 661 to 666c of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 661 of Title 16 and Tables.

The Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 et seq.), referred to in subsec. (a)(8), is act Feb. 25, 1920, ch. 85, 41 Stat. 437, as amended, known as the Mineral Leasing Act, which is classified generally to chapter 3A (§ 181 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 181 of this title and Tables.

§ 1293. Employee protection

(a) Retaliatory practices prohibited

No person shall discharge, or in any other way discriminate against, or cause to be fired or discriminated against, any employee or any authorized representative of employees by reason

of the fact that such employee or representative has filed, instituted, or caused to be filed or instituted any proceeding under this chapter, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this chapter.

(b) Review by Secretary; investigation; notice; hearing; findings of fact; judicial review

Any employee or a representative of employees who believes that he has been fired or otherwise discriminated against by any person in violation of subsection (a) of this section may, within thirty days after such alleged violation occurs, apply to the Secretary for a review of such firing or alleged discrimination. A copy of the application shall be sent to the person or operator who will be the respondent. Upon receipt of such application, the Secretary shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to such review to enable the parties to present information relating to the alleged violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5. Upon receiving the report of such investigation the Secretary shall make findings of fact. If he finds that a violation did occur, he shall issue a decision incorporating therein his findings and an order requiring the party committing the violation to take such affirmative action to abate the violation as the Secretary deems appropriate, including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his former position with compensation. If he finds that there was no violation, he will issue a finding. Orders issued by the Secretary under this subsection shall be subject to judicial review in the same manner as orders and decisions of the Secretary are subject to judicial review under this chapter.

(c) Costs

Whenever an order is issued under this section to abate any violation, at the request of the applicant a sum equal to the aggregate amount of all costs and expenses (including attorneys' fees) to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the persons committing the violation.

(Pub. L. 95-87, title VII, § 703, Aug. 3, 1977, 91 Stat. 520.)

§ 1294. Penalty

Any person who shall, except as permitted by law, willfully resist, prevent, impede, or interfere with the Secretary or any of his agents in the performance of duties pursuant to this chapter shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than one year, or both.

(Pub. L. 95-87, title VII, § 704, Aug. 3, 1977, 91 Stat. 520.)

CODIFICATION

Section 704 of Pub. L. 95-87 also amended section 1114 of Title 18, Crimes and Criminal Procedure.

§ 1295. Grants to States

(a) Assisting any State in development, administration, and enforcement of State programs under this chapter

The Secretary is authorized to make annual grants to any State for the purpose of assisting such State in developing, administering, and enforcing State programs under this chapter. Except as provided in subsection (c) of this section, such grants shall not exceed 80 per centum of the total costs incurred during the first year, 60 per centum of total costs incurred during the second year, and 50 per centum of the total costs incurred during each year thereafter.

(b) Assisting any State in development, administration, and enforcement of its State programs

The Secretary is authorized to cooperate with and provide assistance to any State for the purpose of assisting it in the development, administration, and enforcement of its State programs. Such cooperation and assistance shall include—

(1) technical assistance and training including provision of necessary curricular and instruction materials, in the development, administration, and enforcement of the State programs; and

(2) assistance in preparing and maintaining a continuing inventory of information on surface coal mining and reclamation operations for each State for the purposes of evaluating the effectiveness of the State programs. Such assistance shall include all Federal departments and agencies making available data relevant to surface coal mining and reclamation operations and to the development, administration, and enforcement of State programs concerning such operations.

(c) Increases in annual grants

If, in accordance with section 1273(d) of this title, a State elects to regulate surface coal mining and reclamation operations on Federal lands, the Secretary may increase the amount of the annual grants under subsection (a) of this section by an amount which he determines is approximately equal to the amount the Federal Government would have expended for such regulation if the State had not made such election.

(Pub. L. 95-87, title VII, § 705, Aug. 3, 1977, 91 Stat. 520.)

§ 1296. Annual report to President and Congress

The Secretary shall submit annually to the President and the Congress a report concerning activities conducted by him, the Federal Government, and the States pursuant to this chapter. Among other matters, the Secretary shall include in such report recommendations for additional administrative or legislative action as he deems necessary and desirable to accomplish the purposes of this chapter.

(Pub. L. 95-87, title VII, § 706, Aug. 3, 1977, 91 Stat. 521.)

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in this section relating to requirement to submit a report annually to Congress, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 109 of House Document No. 103-7.

§ 1297. Separability

If any provision of this chapter or the applicability thereof to any person or circumstances is held invalid, the remainder of this chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

(Pub. L. 95-87, title VII, §707, Aug. 3, 1977, 91 Stat. 521.)

§ 1298. Alaskan surface coal mine study**(a) Contract with National Academy of Sciences-National Academy of Engineering**

The Secretary is directed to contract to such extent or in such amounts as are provided in advance in appropriation Acts with the National Academy of Sciences-National Academy of Engineering for an in-depth study of surface coal mining conditions in the State of Alaska in order to determine which, if any, of the provisions of this chapter should be modified with respect to surface coal mining operations in Alaska.

(b) Report to President and Congress

The Secretary shall report on the findings of the study to the President and Congress no later than two years after August 3, 1977.

(c) Draft of legislation

The Secretary shall include in his report a draft of legislation to implement any changes recommended to this chapter.

(d) Modification of applicability of environmental protection provisions of this chapter to surface coal mining operations in Alaska; publication in Federal Register; hearing

Until one year after the Secretary has made this report to the President and Congress, or three years after August 3, 1977, whichever comes first, the Secretary is authorized to modify the applicability of any environmental protection provision of this chapter, or any regulation issued pursuant thereto, to any surface coal mining operation in Alaska from which coal has been mined during the year preceding August 3, 1977, if he determines that it is necessary to insure the continued operation of such surface coal mining operation. The Secretary may exercise this authority only after he has (1) published notice of proposed modification in the Federal Register and in a newspaper of general circulation in the area of Alaska in which the affected surface coal mining operation is located, and (2) held a public hearing on the proposed modification in Alaska.

(e) Interim regulations

In order to allow new mines in Alaska to continue orderly development, the Secretary is authorized to issue interim regulations pursuant to section 1251(b) of this title including those

modifications to the environmental standards as required based on the special physical, hydrological and climatic conditions in Alaska but with the purpose of protecting the environment to an extent equivalent to those standards for the other coal regions.

(f) Authorization of appropriations

There is authorized to be appropriated for the purpose of this section \$250,000: *Provided*, That no new budget authority is authorized to be appropriated for fiscal year 1977.

(Pub. L. 95-87, title VII, §708, Aug. 3, 1977, 91 Stat. 521.)

§ 1299. Study of reclamation standards for surface mining of other minerals**(a) Contract with National Academy of Sciences-National Academy of Engineering; requirements**

The Chairman of the Council on Environmental Quality is directed to contract to such extent or in such amounts as are provided in appropriation Acts with the National Academy of Sciences-National Academy of Engineering, other Government agencies or private groups as appropriate, for an in-depth study of current and developing technology for surface and open pit mining and reclamation for minerals other than coal designed to assist in the establishment of effective and reasonable regulation of surface and open pit mining and reclamation for minerals other than coal. The study shall—

(1) assess the degree to which the requirements of this chapter can be met by such technology and the costs involved;

(2) identify areas where the requirements of this chapter cannot be met by current and developing technology;

(3) in those instances describe requirements most comparable to those of this chapter which could be met, the costs involved, and the differences in reclamation results between these requirements and those of this chapter; and

(4) discuss alternative regulatory mechanisms designed to insure the achievement of the most beneficial postmining land use for areas affected by surface and open pit mining.

(b) Submittal of study with legislative recommendation to President and Congress

The study together with specific legislative recommendations shall be submitted to the President and the Congress no later than eighteen months after August 3, 1977: *Provided*, That, with respect to surface or open pit mining for sand and gravel the study shall be submitted no later than twelve months after August 3, 1977: *Provided further*, That with respect to mining for oil shale and tar sands that a preliminary report shall be submitted no later than twelve months after August 3, 1977.

(c) Authorization of appropriations

There are authorized to be appropriated for the purpose of this section \$500,000: *Provided*, That no new budget authority is authorized to be appropriated for fiscal year 1977.

(Pub. L. 95-87, title VII, §709, Aug. 3, 1977, 91 Stat. 522.)

§ 1300. Indian lands**(a) Study of regulation of surface mining; consultation with tribe; proposed legislation**

The Secretary is directed to study the question of the regulation of surface mining on Indian lands which will achieve the purpose of this chapter and recognize the special jurisdictional status of these lands. In carrying out this study the Secretary shall consult with Indian tribes. The study report shall include proposed legislation designed to allow Indian tribes to elect to assume full regulatory authority over the administration and enforcement of regulation of surface mining of coal on Indian lands.

(b) Submittal of study to Congress

The study report required by subsection (a) of this section together with drafts of proposed legislation and the view of each Indian tribe which would be affected shall be submitted to the Congress as soon as possible but not later than January 1, 1978.

(c) Compliance with interim environmental protection standards of this chapter

On and after one hundred and thirty-five days from August 3, 1977, all surface coal mining operations on Indian lands shall comply with requirements at least as stringent as those imposed by subsections (b)(2), (b)(3), (b)(5), (b)(10), (b)(13), (b)(19), and (d) of section 1265 of this title and the Secretary shall incorporate the requirements of such provisions in all existing and new leases issued for coal on Indian lands.

(d) Compliance with permanent environmental protection standards of this chapter

On and after thirty months from August 3, 1977, all surface coal mining operations on Indian lands shall comply with requirements at least as stringent as those imposed by sections 1257, 1258, 1259, 1260, 1265, 1266, 1267, and 1269 of this title and the Secretary shall incorporate the requirements of such provisions in all existing and new leases issued for coal on Indian lands.

(e) Inclusion and enforcement of terms and conditions of leases

With respect to leases issued after August 3, 1977, the Secretary shall include and enforce terms and conditions in addition to those required by subsections (c) and (d) of this section as may be requested by the Indian tribe in such leases.

(f) Approval of changes in terms and conditions of leases

Any change required by subsection (c) or (d) of this section in the terms and conditions of any coal lease on Indian lands existing on August 3, 1977, shall require the approval of the Secretary.

(g) Participation of tribes

The Secretary shall provide for adequate participation by the various Indian tribes affected in the study authorized in this section and not more than \$700,000 of the funds authorized in section 1302(a) of this title shall be reserved for this purpose.

(h) Jurisdictional status

The Secretary shall analyze and make recommendations regarding the jurisdictional status

of Indian Lands¹ outside the exterior boundaries of Indian reservations: *Provided*, That nothing in this chapter shall change the existing jurisdictional status of Indian Lands.¹

(i) Grants

The Secretary shall make grants to the Navajo, Hopi, Northern Cheyenne, and Crow tribes to assist such tribes in developing regulations and programs for regulating surface coal mining and reclamation operations on Indian lands. Grants made under this subsection shall be used to establish an office of surface mining regulation for each such tribe. Each such office shall—

(1) develop tribal regulations and program policies with respect to surface mining;

(2) assist the Office of Surface Mining Reclamation and Enforcement established by section 1211 of this title in the inspection and enforcement of surface mining activities on Indian lands, including, but not limited to, permitting, mine plan review, and bond release; and

(3) sponsor employment training and education in the area of mining and mineral resources.

(j) Tribal regulatory authority**(1) Tribal regulatory programs****(A) In general**

Notwithstanding any other provision of law, an Indian tribe may apply for, and obtain the approval of, a tribal program under section 1253 of this title regulating in whole or in part surface coal mining and reclamation operations on reservation land under the jurisdiction of the Indian tribe using the procedures of section 1254(e) of this title.

(B) References to State

For purposes of this subsection and the implementation and administration of a tribal program under subchapter V, any reference to a "State" in this chapter shall be considered to be a reference to a "tribe".

(2) Conflicts of interest**(A) In general**

The fact that an individual is a member of an Indian tribe does not in itself constitute a violation of section 1211(f) of this title.

(B) Employees of tribal regulatory authority

Any employee of a tribal regulatory authority shall not be eligible for a per capita distribution of any proceeds from coal mining operations conducted on Indian reservation lands under this chapter.

(3) Sovereign immunity

To receive primary regulatory authority under section 1254(e) of this title, an Indian tribe shall waive sovereign immunity for purposes of section 1270 of this title and paragraph (4).

(4) Judicial review**(A) Civil actions****(i) In general**

After exhausting all tribal remedies with respect to a civil action arising under a

¹ So in original. Probably should be "lands".

tribal program approved under section 1254(e) of this title, an interested party may file a petition for judicial review of the civil action in the United States circuit court for the circuit in which the surface coal mining operation named in the petition is located.

(ii) Scope of review

(I) Questions of law

The United States circuit court shall review de novo any questions of law under clause (i).

(II) Findings of fact

The United States circuit court shall review findings of fact under clause (i) using a clearly erroneous standard.

(B) Criminal actions

Any criminal action brought under section 1268 of this title with respect to surface coal mining or reclamation operations on Indian reservation lands shall be brought in—

- (i) the United States District Court for the District of Columbia; or
- (ii) the United States district court in which the criminal activity is alleged to have occurred.

(5) Grants

(A) In general

Except as provided in subparagraph (B), grants for developing, administering, and enforcing tribal programs approved in accordance with section 1254(e) of this title shall be provided to an Indian tribe in accordance with section 1295 of this title.

(B) Exception

Notwithstanding subparagraph (A), the Federal share of the costs of developing, administering, and enforcing an approved tribal program shall be 100 percent.

(6) Report

Not later than 18 months after the date on which a tribal program is approved under subsection (e) of section 1254 of this title, the Secretary shall submit to the appropriate committees of Congress a report, developed in cooperation with the applicable Indian tribe, on the tribal program that includes a recommendation of the Secretary on whether primary regulatory authority under that subsection should be expanded to include additional Indian lands.

(Pub. L. 95–87, title VII, §710, Aug. 3, 1977, 91 Stat. 523; Pub. L. 102–486, title XXV, §2514, Oct. 24, 1992, 106 Stat. 3112; Pub. L. 109–432, div. C, title II, §209, Dec. 20, 2006, 120 Stat. 3019.)

AMENDMENTS

2006—Subsec. (i). Pub. L. 109–432, §209(b), struck out “, except that nothing in this subsection may be construed as providing such tribes with the authorities set forth under section 1253 of this title” after “Indian lands” in introductory provisions.

Subsec. (j). Pub. L. 109–432, §209(a), added subsec. (j).
1992—Subsec. (i). Pub. L. 102–486 added subsec. (i).

§ 1301. Environmental practices

In order to encourage advances in mining and reclamation practices or to allow post-mining

land use for industrial, commercial, residential, or public use (including recreational facilities), the regulatory authority with approval by the Secretary may authorize departures in individual cases on an experimental basis from the environmental protection performance standards promulgated under sections 1265 and 1266 of this title. Such departures may be authorized if (i) the experimental practices are potentially more or at least as environmentally protective, during and after mining operations, as those required by promulgated standards; (ii) the mining operations approved for particular land-use or other purposes are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practices; and (iii) the experimental practices do not reduce the protection afforded public health and safety below that provided by promulgated standards.

(Pub. L. 95–87, title VII, §711, Aug. 3, 1977, 91 Stat. 523.)

§ 1302. Authorization of appropriations

There is authorized to be appropriated to the Secretary for the purposes of this chapter the following sums; and all such funds appropriated shall remain available until expended:

(a) For the implementation and funding of sections 1252, 1273, and 1300 of this title, there are authorized to be appropriated to the Secretary of the Interior the sum of \$10,000,000 for the fiscal year ending September 30, 1978, \$25,000,000 for each of the two succeeding fiscal years, and in such fiscal years such additional amounts as may be necessary for increases in salary, pay, retirement, other employee benefits authorized by law, and other nondiscretionary costs.

(b) For the implementation and funding of section 1257(c) of this title, see the provisions of section 1231(c)(9) of this title.

(c) For the implementation and funding of section 1295 of this title and for the administrative and other purposes of this chapter, except as otherwise provided for in this chapter, authorization is provided for the sum of \$20,000,000 for the fiscal year ending September 30, 1978, and \$30,000,000 for each of the two succeeding fiscal years and such funds that are required thereafter.

(d) In order that the implementation of the requirements of this chapter may be initiated in a timely and orderly manner, the Secretary is authorized, subject to the approval of the appropriation Committees of the House and of the Senate, to utilize not to exceed \$2,000,000 of the appropriations otherwise available to him for the fiscal year ending September 30, 1977, for the administration and other purposes of this chapter.

(Pub. L. 95–87, title VII, §712, Aug. 3, 1977, 91 Stat. 524; Pub. L. 95–343, §1, Aug. 11, 1978, 92 Stat. 473; Pub. L. 101–508, title VI, §6012(b), Nov. 5, 1990, 104 Stat. 1388–298; Pub. L. 109–432, div. C, title II, §201(b), Dec. 20, 2006, 120 Stat. 3008.)

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–432 substituted “1231(c)(9)” for “1231(c)(11)”.

1990—Subsec. (b). Pub. L. 101–508 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as fol-

lows: “For the implementation and funding of section 1257(c) of this title there are authorized to be appropriated sums reserved by section 1231(b)(1) of this title for the purposes of section 1257(c) of this title and such additional sums as may be necessary (i) for the fiscal year ending September 30, 1978, to provide an amount not to exceed \$10,000,000 to carry out the purposes of section 1257(c) of this title and (ii) for the fiscal years ending September 30, 1979, and September 30, 1980, to provide an amount not to exceed \$25,000,000 to carry out the purposes of section 1257(c) of this title.”

1978—Subsec. (a). Pub. L. 95-343, §1(1), increased authorization from \$10,000,000 to \$25,000,000 for each of the two succeeding fiscal years, and inserted provisions authorizing such necessary additional amounts for increases in salary, etc.

Subsec. (b). Pub. L. 95-343, §1(2), substituted provisions authorizing appropriations of not to exceed \$10,000,000 for fiscal year ending Sept. 30, 1978, and not to exceed \$25,000,000 for each of fiscal years ending Sept. 30, 1979, and 1980, for provisions authorizing appropriations of not to exceed \$10,000,000 and such additional amounts as are necessary for fiscal year ending Sept. 30, 1978, and for each fiscal year for a period of fifteen fiscal years thereafter.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508, effective Oct. 1, 1991, see section 6014 of Pub. L. 101-508 set out as a note under section 1231 of this title.

CREDITING PERFORMANCE BOND FORFEITURES

Pub. L. 105-277, div. A, §101(e) [title I], Oct. 21, 1998, 112 Stat. 2681-231, 2681-244, provided in part that: “Notwithstanding 31 U.S.C. 3302, an additional amount shall be credited to this account, to remain available until expended, from performance bond forfeitures in fiscal year 1999 and thereafter.”

COST-BASED FEES FOR PRODUCTS OF MINE MAP REPOSITORY

Pub. L. 105-277, div. A, §101(e) [title I], Oct. 21, 1998, 112 Stat. 2681-231, 2681-244, provided in part that: “Beginning in fiscal year 1999 and thereafter, cost-based fees for the products of the Mine Map Repository shall be established (and revised as needed) in Federal Register Notices, and shall be collected and credited to this account, to be available until expended for the costs of administering this program.”

§ 1303. Coordination of regulatory and inspection activities

(a) The President shall, to the extent appropriate, and in keeping with the particular enforcement requirements of each Act referred to herein, insure the coordination of regulatory and inspection activities among the departments, agencies, and instrumentalities to which such activities are assigned by this chapter, by the Clean Air Act [42 U.S.C. 7401 et seq.], by the Water Pollution Control Act [33 U.S.C. 1251 et seq.], by the Department of Energy Organization Act [42 U.S.C. 7101 et seq.], and by existing or subsequently enacted Federal mine safety and health laws, except that no such coordination shall be required with respect to mine safety and health inspections, advance notice of which is or may be prohibited by existing or subsequently enacted Federal mine safety and health laws.

(b) The President may execute the coordination required by this section by means of an Executive order, or by any other mechanism he determines to be appropriate.

(Pub. L. 95-87, title VII, §713, Aug. 3, 1977, 91 Stat. 524.)

REFERENCES IN TEXT

The Clean Air Act, referred to in subsec. (a), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§7401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

The Water Pollution Control Act, referred to in subsec. (a), probably means act June 30, 1948, ch. 758, 62 Stat. 1155, known as the Federal Water Pollution Control Act, as amended generally by Pub. L. 92-500, §2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Department of Energy Organization Act, referred to in subsec. (a), is Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, as amended, which is classified principally to chapter 84 (§7101 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of Title 42 and Tables.

§ 1304. Surface owner protection

(a) Applicability

The provisions of this section shall apply where coal owned by the United States under land and the surface rights to which are owned by a surface owner as defined in this section is to be mined by methods other than underground mining techniques.

(b) Lease of coal deposits governed by section 201 of this title

Any coal deposits subject to this section shall be offered for lease pursuant to section 201(a) of this title.

(c) Consent to lease by surface owner

The Secretary shall not enter into any lease of Federal coal deposits until the surface owner has given written consent to enter and commence surface mining operations and the Secretary has obtained evidence of such consent. Valid written consent given by any surface owner prior to August 3, 1977, shall be deemed sufficient for the purposes of complying with this section.

(d) Preferences

In order to minimize disturbance to surface owners from surface coal mining of Federal coal deposits and to assist in the preparation of comprehensive land-use plans required by section 201(a) of this title, the Secretary shall consult with any surface owner whose land is proposed to be included in a leasing tract and shall ask the surface owner to state his preference for or against the offering of the deposit under his land for lease. The Secretary shall, in his discretion but to the maximum extent practicable, refrain from leasing coal deposits for development by methods other than underground mining techniques in those areas where a significant number of surface owners have stated a preference against the offering of the deposits for lease.

(e) “Surface owner” defined

For the purpose of this section the term “surface owner” means the natural person or persons (or corporation, the majority stock of which is held by a person or persons who meet the other requirements of this section) who—

(1) hold legal or equitable title to the land surface;

(2) have their principal place of residence on the land; or personally conduct farming or ranching operations upon a farm or ranch unit to be affected by surface coal mining operations; or receive directly a significant portion of their income, if any, from such farming or ranching operations; and

(3) have met the conditions of paragraphs (1) and (2) for a period of at least three years prior to the granting of the consent.

In computing the three-year period the Secretary may include periods during which title was owned by a relative of such person by blood or marriage during which period such relative would have met the requirements of this subsection.

(f) Exception

This section shall not apply to Indian lands.

(g) Effect on property rights of United States or any other landowner

Nothing in this section shall be construed as increasing or diminishing any property rights by the United States or by any other landowner.

(Pub. L. 95-87, title VII, §714, Aug. 3, 1977, 91 Stat. 524.)

§ 1305. Federal lessee protection

In those instances where the coal proposed to be mined by surface coal mining operations is owned by the Federal Government and the surface is subject to a lease or a permit issued by the Federal Government, the application for a permit shall include either:

(1) the written consent of the permittee or lessee of the surface lands involved to enter and commence surface coal mining operations on such land, or in lieu thereof;

(2) evidence of the execution of a bond or undertaking to the United States or the State, whichever is applicable, for the use and benefit of the permittee or lessee of the surface lands involved to secure payment of any damages to the surface estate which the operations will cause to the crops, or to the tangible improvements of the permittee or lessee of the surface lands as may be determined by the parties involved, or as determined and fixed in an action brought against the operator or upon the bond in a court of competent jurisdiction. This bond is in addition to the performance bond required for reclamation under this chapter.

(Pub. L. 95-87, title VII, §715, Aug. 3, 1977, 91 Stat. 525.)

§ 1306. Effect on rights of owner of coal in Alaska to conduct surface mining operations

Nothing in this chapter shall be construed as increasing or diminishing the rights of any owner of coal in Alaska to conduct or authorize surface coal mining operations for coal which has been or is hereafter conveyed out of Federal ownership to the State of Alaska or pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.]: *Provided*, That such surface coal mining operations meet the requirements of this chapter.

(Pub. L. 95-87, title VII, §716, Aug. 3, 1977, 91 Stat. 526.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in text, is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

§ 1307. Water rights and replacement

(a) Nothing in this chapter shall be construed as affecting in any way the right of any person to enforce or protect, under applicable law, his interest in water resources affected by a surface coal mining operation.

(b) The operator of a surface coal mine shall replace the water supply of an owner of interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source where such supply has been affected by contamination, diminution, or interruption proximately resulting from such surface coal mine operation.

(Pub. L. 95-87, title VII, §717, Aug. 3, 1977, 91 Stat. 526.)

§ 1308. Advance appropriations

Notwithstanding any other provision of this chapter, no authority to make payments under this chapter shall be effective except to such extent or in such amounts as are provided in advance in appropriation Acts.

(Pub. L. 95-87, title VII, §718, Aug. 3, 1977, 91 Stat. 526.)

§ 1308a. Use of civil penalty funds to reclaim lands

In fiscal year 2009 and thereafter, the Secretary of the Interior, pursuant to regulations, may use directly or through grants to States, moneys collected for civil penalties assessed under section 1268 of this title, to reclaim lands adversely affected by coal mining practices after August 3, 1977, to remain available until expended.

(Pub. L. 111-8, div. E, title I, Mar. 11, 2009, 123 Stat. 712.)

CODIFICATION

Section was enacted as part of the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2009, and also as part of the Omnibus Appropriations Act, 2009, and not as part of the Surface Mining Control and Reclamation Act of 1977 which comprises this chapter.

§ 1309. Certification and training of blasters

In accordance with this chapter, the Secretary of the Interior (or the approved State regulatory authority as provided for in section 1253 of this title) shall promulgate regulations requiring the training, examination, and certification of persons engaging in or directly responsible for blasting or use of explosives in surface coal mining operations.

(Pub. L. 95-87, title VII, §719, Aug. 3, 1977, 91 Stat. 526.)

§ 1309a. Subsidence**(a) Requirements**

Underground coal mining operations conducted after October 24, 1992, shall comply with each of the following requirements:

(1) Promptly repair, or compensate for, material damage resulting from subsidence caused to any occupied residential dwelling and structures related thereto, or non-commercial building due to underground coal mining operations. Repair of damage shall include rehabilitation, restoration, or replacement of the damaged occupied residential dwelling and structures related thereto, or non-commercial building. Compensation shall be provided to the owner of the damaged occupied residential dwelling and structures related thereto or non-commercial building and shall be in the full amount of the diminution in value resulting from the subsidence. Compensation may be accomplished by the purchase, prior to mining, of a noncancellable premium-prepaid insurance policy.

(2) Promptly replace any drinking, domestic, or residential water supply from a well or spring in existence prior to the application for a surface coal mining and reclamation permit, which has been affected by contamination, diminution, or interruption resulting from underground coal mining operations.

Nothing in this section shall be construed to prohibit or interrupt underground coal mining operations.

(b) Regulations

Within one year after October 24, 1992, the Secretary shall, after providing notice and opportunity for public comment, promulgate final regulations to implement subsection (a) of this section.

(Pub. L. 95-87, title VII, §720, as added Pub. L. 102-486, title XXV, §2504(a)(1), Oct. 24, 1992, 106 Stat. 3104.)

REVIEW OF EXISTING REQUIREMENTS AND REPORT TO CONGRESS

Section 2504(a)(2) of Pub. L. 102-486 directed Secretary of the Interior to review existing requirements related to underground coal mine subsidence and natural gas and petroleum pipeline safety, submit a report detailing results of review to Committee on Energy and Natural Resources of Senate and Committee on Interior and Insular Affairs of House of Representatives within 18 months of Oct. 24, 1992, and, where appropriate, to commence a rulemaking to address any deficiencies in existing law determined in the review regarding notification, coordination and mitigation.

§ 1309b. Research

The Office of Surface Mining Reclamation and Enforcement is authorized to conduct studies, research and demonstration projects relating to the implementation of, and compliance with, subchapter V of this chapter, and provide technical assistance to states¹ for that purpose. Prior to approving any such studies, research or demonstration projects the Director, Office of Surface Mining Reclamation and Enforcement,

shall first consult with the Director, Bureau of Mines, and obtain a determination from such Director that the Bureau of Mines is not already conducting like or similar studies, research or demonstration projects. Studies, research and demonstration projects for the purposes of subchapter IV of this chapter shall only be conducted in accordance with section 1231(c)(6)² of this title.

(Pub. L. 95-87, title VII, §721, as added Pub. L. 102-486, title XXV, §2504(c)(3), Oct. 24, 1992, 106 Stat. 3105.)

REFERENCES IN TEXT

Section 1231(c)(6) of this title, referred to in text, was repealed and paragraph (8) of section 1231(c) was redesignated (6) by Pub. L. 109-432, div. C, title II, §201(a)(1), Dec. 20, 2006, 120 Stat. 3006.

CHANGE OF NAME

Bureau of Mines redesignated United States Bureau of Mines by section 10(b) of Pub. L. 102-285, set out as a note under section 1 of this title. For provisions relating to closure and transfer of functions of the United States Bureau of Mines, see Transfer of Functions note set out under section 1 of this title.

SUBCHAPTER VIII—UNIVERSITY COAL RESEARCH LABORATORIES

§ 1311. Establishment of university coal research laboratories**(a) Designation by Secretary of Energy**

The Secretary of Energy, after consultation with the National Academy of Engineering, shall designate thirteen institutions of higher education at which university coal research laboratories will be established and operated. Ten such designations shall be made as provided in subsection (e) of this section and the remaining three shall be made in fiscal year 1980.

(b) Criteria

In making designations under this section, the Secretary of Energy shall consider the following criteria:

(1) Those ten institutions of higher education designated as provided in subsection (e) of this section shall be located in a State with abundant coal reserves.

(2) The institution of higher education shall have experience in coal research, expertise in several areas of coal research, and potential or currently active, outstanding programs in coal research.

(3) The institution of higher education has the capacity to establish and operate the coal laboratories to be assisted under this subchapter.

(c) Location of coal laboratories

Not more than one coal laboratory established pursuant to this subchapter shall be located in a single State and at least one coal laboratory shall be established within each of the major coal provinces recognized by the United States Bureau of Mines, including Alaska.

(d) Period for submission of applications for designation; contents

The Secretary of Energy shall establish a period, not in excess of ninety days after August 3,

¹ So in original. Probably should be capitalized.

² See References in Text note below.